***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

-

WRIT PETITION No.22388 of 2004

-

% 28.12.2004

-

Between:

M/s.Sri Sesha Bhagya Lakshmi Rice Mill, rep. by its Managing Partner B.Rama Gopal Reddy.

... PETITIONER

AND

The Agricultural Market Committee, rep. by its Secretary, Ongole, Prakasam District.

...RESPONDENT

! COUNSEL FOR THE PETITIOENR: Mr.Sai Gangadhar Chamarty

^ COUNSEL FOR THE RESPONDENT: Mr.K.Madhava Reddy,

Standing Counsel for Agricultural Market Committee.

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22388 of 2004

Between:

M/s Sri Sesha Bhagya Lakshmi Rice Mill,

Rep. by its Managing Partner B. Rama Gopal Reddy,

S/o Seshireddy, aged 48 years,

R/o Ongole, Prakasam District.

... PETITIONER

AND

The Agricultural Market Committee, Rep. by its Secretary,
Ongole, Prakasam District.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ Order or direction more particularly in the nature of Writ of

mandamus declaring the proceedings bearing Roc No. 337/03/AS of the respondent herein dt. 30-11-2004 rejecting to issue Export Permit Book to the Petitioner herein as arbitrary illegal capricious and violative of fundamental right guaranteed to the Petitioner herein under Arts. 14, 19 (1) (g) and 21 of the Constitution of India and consequently direct the respondent herein to issue export permit book under the provisions of The A.P. (Agricultural Produce & Livestock) Markets Act 1966.

Counsel for the Petitioner: MR.SAI GANGADHAR CHAMARTY

Counsel for the Respondent: Mr.K.Madhava Reddy, Standing Counsel for Agricultural Market Committee.

The Court at the admission stage made the following :

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO. 22388 OF 2004

ORDER:

-

-

The petitioner is a rice mill. It submitted an application to the respondent for issuance of "Export Permit Books". Through letter dated 30.11.2004, the respondent informed the petitioner that it would not be issued Permit Book, unless market fee is paid in respect of the agricultural produce, covered by the used Permit Books, and unless it executes an undertaking, in terms of condition No.8 of the licence, to the effect that it shall collect the market fee from the purchasers and remit the same to the committee.

The petitioner contends that the obligation to pay market fee is that of the purchaser, and it is the duty of the respondent to collect the market fee. It is also stated that the permits, contained in the Export Permit Book, contain all the particulars of the sale, such as the description of the purchaser, place and means of

export, name of the produce and its weighment, and the fact whether market fee was paid or not; and in that view of the matter, there ought not have been any difficulty for the respondent to take steps to collect the market fee. It is also stated that, if any market fee is due from the petitioner, the procedure prescribed under the A.P. (Agricultural Produce & Livestock) Markets Act, 1966 (for short "the Act"), and the Rules made there under has to be followed, and the petitioner cannot be pressurized to pay that amount, indirectly.

The respondent filed a counter affidavit and the letter dated 30.11.2004 is sought to be justified. Reference is made to Section 12 of the Act, conditions of licence, prescribed under the Rules, and Bye-law 24 of the approved Bye-laws of the Market Committees. It is alleged that the export permits issued to the licensees are vital in the matter of ensuring collection and remittance of licence fee, and since the petitioner did not comply with the conditions of the licence, the Book of Export Permits was denied to it.

Learned counsel for the petitioner submits that being a licensee under Section 7 of the Act, the petitioner is entitled to be furnished Export Book, and denial of the same would render the licence inoperative. It is his case that the purpose of issuing Export Permit Books is to ensure that necessary information is furnished to the Market Committees, and it is for the respondent to take steps to collect market fee from the purchasers. He contends that even otherwise the respondent has not issued any notice of demand to the petitioner and that the respondent cannot withhold the books, as a device, to exert pressure on the petitioner to pay certain amounts, for which there did not exist any demand, much less liability.

Learned standing counsel for the respondent submits that a combined reading of Sections 7 and 12 of the Act, conditions of licence prescribed under the Rules, and Bye-law 24 of the Bye-laws makes it obligatory for a licensee to remit the licence fee for the sales that have taken place with him. According to him, the respondent was justified in withholding the books till the petitioner accounted for and paid the market fee, for the transactions under the books, which were issued to it earlier.

The Act is a comprehensive legislation, dealing with the regulation of purchase and sale of agricultural produce and livestock products; and establishment of markets. Section 12 is the charging Section, which empowers the collection of market fee at a specified rate, over the sales and purchases of the notified items in the notified market area. Section 7 provides for grant of licences to the traders and commission agents who undertake sale, purchase, storage, or other connected activities in relation to notified agricultural produce or livestock, in the area. The form of licence is prescribed under the Rules (Form 8).

For the effective functioning of market committees, bye-laws are also approved. Bye-law 24 thereof provides for issuance of Export Permit Books to the licensees, as well as their corresponding obligations. From the scheme contained in the above provisions, it is evident that a licensee is entitled to be furnished the Export Permit Book, on payment of costs and on deposit of security amount of Rs.150/-. The basic object of issuing the Permit Books is to require the licensee to furnish the necessary information “to identify the produce” intended for export. Bye-law 24 (8) mandates that fresh Book shall be issued only after the licensee submits the detailed accounts in respect of Permit Books, issued earlier.

The petitioner approached the respondent for issuance of Permit Book on 13.10.2004. The respondent is said to have refused to issue the Books on the ground that rice, the main item of trade by the petitioner, is a notified commodity and Permit Book would be issued if only it undertakes to pay the market fee on the rice sold by it. The petitioner, along with certain others, filed W.P.No.19443 of 2004, aggrieved by the refusal. The writ petition was disposed of on 22.11.2004, leaving it open to the petitioner to make a written representation to the respondent, and the latter was directed to pass appropriate orders therein, within a period of one week. It was in this background that the petitioner submitted a written representation on 25.11.2004.

The respondent passed the impugned order, refusing to accede to the request of the petitioner. After referring to the various provisions of the Act, Rules and bye-laws, the respondent summed up the order as under:

"1) . . . . . As per your monthly returns, you have used permits at the time of rice sales and not paid market fee to this committee. The fresh Permit Book will not be issued until the market fee is paid due to the committee on used permit books.

2) That you have violated the Section 12 of the Act. You have not paid market fee on the permit books already used so far.

3) That you have failed to give binding letters as per the licence condition No.8, wherein a licensee sells notified agricultural produce of his own, he shall collect market fee from the purchaser and remit the same to this committee."

From the above, it is evident that the respondent refused to issue the Permit Book to the petitioner on two grounds, namely, that the petitioner did not pay the market fee for the transactions covered by the books already used, and that the petitioner failed to furnish an undertaking, in terms of condition No.8 of the licence. Therefore, it needs to be seen whether the grounds on which the respondent refused to issue the books in accord with the provisions of the Act, Rules and Bye-laws.

What is leviable under the Act is a fee and not tax. By and large, the duty of the licensee is to furnish information about the sale or purchase of the notified agricultural produce and to remit the market fee wherever it is collected. Market fee is leviable mostly on a purchase, and the obligation is mainly upon the purchaser to pay it. A reading of bye-law 24 (7) discloses that a licensed trader or commission agent shall not allow any agricultural produce or livestock to leave the notified area, without payment of the market fee, and that he shall submit the purchase returns to the market committee every month, before 25th of the succeeding month. It enables the market committee to take action under Rule 52 of the Market Rules against the defaulters. Rule 52 in turn prescribes procedure for suspension or cancellation of licence, if it is established that the licence was obtained through wilful misrepresentation or fraud, or if the conditions of the licence and the provisions of the rules or bye-laws of the Market Committee are violated. Licence is also liable to be cancelled, if the licensee has become an insolvent, or is convicted of any offence under the Act. Sub-rule (2) makes it obligatory for the committee to give an opportunity to the licensee before such action is taken.

The Act does not contain any provision, which enables the market committee directly, to recover the dues of market fee. Under sub-section (4) of Section 12-C of the Act, the dues of market fee can be recovered, as if it were arrears of land revenue. For this purpose, the authorities of the market committee have to approach the Revenue Department. Section 23 of the Act provides for penalty against the licensees who fail to pay the fee, levied under Section 12 of the Act. The Court, which is conferred with the jurisdiction to try the offence, is empowered to pass orders for summary recovery of the amount of market fee and licence fee chargeable under Section 7, or dues of fee levied under Section 12 of the Act. Thus, except taking steps for suspension or cancellation of the licence, as provided for under Rule 52, or initiation of prosecution and other steps under Section 23 of the Act, the market committee or its delegates have no power in the matter of recovery of market fee.

Even where an enactment provides for the mechanism for recovery of dues of tax or fee directly, by the department or agency concerned, any action in that direction can be, only after a demand is made in accordance with the relevant provisions, and the licensee or an assessee does not comply with the demand. The question of taking any penal or coercive action, without issuing any demand notice or assessment order, does not arise. In the instant case, the respondent refused to issue Permit Book to the petitioner on the ground that it did not pay the market fee, for the transactions covered by the monthly returns and permits used by him, and that the petitioner failed to execute an undertaking in terms of condition No.8 of licence conditions.

As for the first ground, it needs to be noticed that the step taken by the respondent is clearly beyond his powers and outside the scope and scheme of the Act, Rules and Bye-laws. When the bye-laws provide for the issuance of books for a particular purpose and also indicate the consequences, in the event of any lapse on the part of a licensee, the respondent cannot be permitted to pressurize the petitioner to pay the market fee, in relation to the previous transactions. Apart from there not being any power in the respondent, there does not exist any quantification, much less, demand

of the alleged dues of the market fee, from the petitioner. What is impermissible directly under law, cannot be permitted to be done indirectly. The proposition is too well settled, to be supported by any precedent. Issuance of Export Permit Books does not depend on the whims and fancies or i*psi dixit* of the respondent. As long as the petitioner holds a licence under Section 7 of the Act, he is entitled to be issued such books, as of right. Therefore, the first ground taken by the respondent in denying the books to the petitioner does not have any legal basis.

The second ground is equally untenable. The conditions of licence are binding on every licensee. The rules or bye-laws do not provide for execution of an agreement or an undertaking, by a licensee. Hence, The respondent cannot insist on the execution of an undertaking. If the conditions of the licence require the petitioner to do a particular act, the petitioner is under obligation to do the same, even in the absence of any undertaking. On the other hand, if there is no obligation on the part of the petitioner under the relevant provisions or conditions of licence, it cannot be required to execute an undertaking. Either way, the insistence by the respondent on the petitioner to execute an undertaking cannot be supported in law.

For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. The respondent is directed to issue Export Permit Book to the petitioner, on payment of costs for the same, within one week from the date of receipt of a copy of this order. It is, however, made clear that if the respondent finds that the petitioner has not remitted the market fee, as provided for under law, it shall be open to him to take necessary steps prescribed under the relevant provisions of the Act and Rules. There shall be no order as to costs.

_____

28th December, 2004

Note: L.R. copy to be marked.

C.C. in one week.

(B/o)

pan

(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy, for his Lordships' kind perusal)

To

1 The Secretary, Agricultural Market Committee,
Ongole, Prakasam District.

2. 8 L.R.Copies.

3. The Secretary, A.P.Advocates' Association, Library,

High Court buildings, Hyderabad.

4 Two C.D. Copies.